

Under these circumstances, it is clear that there is no basis, either in fact or in law, for granting the Carters' request for designation of EEO, reporting and related character qualifications issues against Dolgoff. The determinations by the full Commission in Letter to Howard B. Dolgoff, supra, constitute res judicata as to the issues in question -- including the issue of whether the licensee of WTHZ(FM) in 1990 had the requisite character qualifications to remain a licensee. The Commission clearly resolved this issue in the affirmative by granting the 1988 license renewal application for WTHZ(FM), albeit subject to periodic EEO reporting conditions in order to allow the Commission to monitor WTHZ(FM)'s progress in meeting the Commission's EEO rule. Consequently, under Atlantic Broadcasting Co., 5 FCC 2d 717 (1966); George E. Cameron, Jr. Communications, supra; Simon Geller, supra, and Central Alabama Broadcasters, Inc., supra, the Presiding Judge is precluded from revisiting the determinations raised by the Commission in its reasoned opinion in Letter to Howard B. Dolgoff, 5 FCC Rcd 7695 (1990).<sup>5</sup> The fact that the full Commission determined that the 1988 WTHZ(FM) renewal application should be granted renders the Carters'

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<sup>5</sup> The licensee of WTHZ(FM) did not contest the Commission's imposition of a short-term renewal of license with respect to the station, nor the imposition of EEO reporting conditions. Rather, the licensee sought mitigation of the \$18,000 forfeiture that the Commission had imposed. The Commission declined to reduce the forfeiture amount. See 7 FCC Rcd (1992).

request for designation of a character qualifications issue patently frivolous and an abuse of process.

Similarly, without merit is the Carters' request for designation of reporting issues against Dolgoff. The Carters suggest, in this regard, that, when Dolgoff filed his Miramar Beach application with the Commission on December 23, 1991, he had an obligation to report the fact that the Commission, on December 26, 1990 -- i.e., one year earlier -- had determined that the licensee of WTHZ(FM) had violated the Commission's EEO rule. In light of the fact that the full Commission had resolved all outstanding issues relating to EEO violations in Letter to Howard B. Dolgoff, supra, and in light of the fact the 1988 license renewal application for WTHZ(FM) had been granted, there was no requirement that Dolgoff report, in his instant application, the Commission's December 26, 1990 action in Letter to Howard B. Dolgoff, supra.

Since the EEO-related issues had been fully resolved by the Commission one year prior to the filing of Dolgoff's Miramar Beach application with no question remaining outstanding as to character qualifications, there was no rational basis to believe that the violation of the Commission's EEO rule by the licensee of WTHZ(FM) could be decisionally significant in this proceeding. Clearly, Dolgoff disclosed in his application his connections with the licensee of WUMX(FM) (formerly WTHZ(FM)), and,

unquestionably, any party could easily have ascertained the fact that the full Commission took the actions which it did in Letter to Howard B. Dolgoff, supra, one year prior to the filing of Dolgoff's Miramar Beach application. Indeed, the Carters did ascertain these facts.

Under these circumstances there was clearly no motive for Dolgoff to conceal, deceive, or mislead the Commission with respect to the action taken by the Commission itself in Letter to Howard B. Dolgoff, supra; the Carers' suggestions to the contrary are totally preposterous. It is well-established that addition of a Section 1.65/reporting issue is warranted only where there is an intent to conceal facts from the Commission, or where there is a pattern of repeated reporting violations or other factors reflecting significant carelessness or inattentiveness. Merrimack Valley Broadcasters, 99 FCC 2d 680, 683-84 n. 9 (1984); Richardson Broadcast Group, 7 FCC Rcd 1583 (1992). None of these circumstances is present in the instant case. Nor have the Carters even alleged (much less demonstrated) that such circumstances are presented here. In light of the foregoing, the Carters' request for designation of Section 1.65/reporting conditions should be summarily denied.<sup>6</sup>

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<sup>6</sup> It should be noted that none of the questions on FCC Form 301 call for information from the applicant as to instances in which the applicant was a principal of a licensee that had been found to have violated a Commission rule.

### III. Conclusion

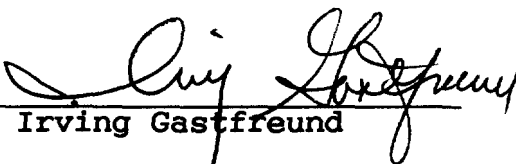
In light of all the foregoing, the Carters' Motion To Enlarge Issues is both procedurally defective and substantively arid. As shown above, the Motion To Enlarge Issues is based on misstatements of fact and unsupported allegations and constitutes in its entirety a pleading which is so frivolous as to constitute abuse of process. Plainly, the Carters' motive must be to attempt to harass Dolgoff with a multitude of vexatious but meritless pleadings. These types of pleading tactics should be strongly censured by the Presiding Judge in the strongest possible terms.

WHEREFORE, the foregoing premises considered, it is respectfully requested that the Presiding Judge dismiss or deny the Carters' July 26, 1992 Motion To Enlarge Issues.

Respectfully submitted,

HOWARD B. DOLGOFF

By:

  
Irving Gastfreund

Kaye, Scholer, Fierman, Hays &  
Handler

The McPherson Building  
901 15th Street, N.W., Suite 1100  
Washington, D.C. 20005

His Attorneys

August 10, 1993

Exhibit 1

### **DECLARATION**

I, Howard B. Dolgoff, do hereby declare, certify and state as follows:

1. I am an individual applicant (FCC File No. BPH-911223ME) for a construction permit for a new FM radio station on Channel 292A in Miramar Beach, Florida.

2. In February, 1992, I undertook the task of locating and securing an alternate transmitter site to improve my application's proposed coverage prior to the amendment-as-of-right deadline applicable to the Miramar Beach application. These efforts were undertaken in consultation with counsel and with my consulting engineer, Mr. William P. Suffa, P.E. Mr. Suffa, prepared a site location map which designated the permissible areas in which a new transmitter site for my application could be located. I also enlisted the services of a real estate broker, Mr. John G. Martin, President of Waterwood Properties, Inc., in Santa Rosa Beach, Florida. Mr. Martin had referred to me by Mr. Bruce Fults of Sandestin Realty in Destin, Florida, which is reputed to be the largest real estate developer in that area. Mr. Martin reviewed with me the permissible area for a transmitter site for my Miramar Beach application, as shown

on the map which had been supplied by my consulting engineer, Mr. Suffa.

3. In February, 1992, Mr. Martin located a possible site that Mr. Martin believed was in the permissible site location area and would meet my needs. The property consisted of six lots in Mack Bayou Park, plus 4.7 acres adjacent to the property. The asking price for the property was \$175,000.

4. Mr. Martin then contacted a land surveyor (Mr. Russell D. Aldrich) for the precise geographic coordinates of the site that was located. Mr. Aldrich is an experienced land surveyor and is the Executive Vice President of the land survey firm of Emerald Coast Associates, Inc. (formerly Raymond Richardson & Associates, Inc.) in Destin, Florida. The information as to the location of the site was relayed to my consulting engineer (Mr. Suffa) to ascertain whether the contemplated site was located in the permissible site location area. Mr. Suffa felt, upon review, that the site in question was clearly outside the boundaries of the permissible site area and that, therefore, I needed to locate another site that would be suitable and would meet applicable requirements.

5. On a subsequent weekend visit to Mr. Martin, Mr. Martin presented me with two other possible transmitter sites to consider. The first of these properties was owned by Mr. J.R.

King (Lot 48); the second property was a parcel owned by Mr. Martin himself. Mr. Martin drove me to Mr. King's property for an inspection.

6. Thereafter, I contacted Mr. Suffa for his advice, and Mr. Suffa advised me to pursue the J.R. King property as a transmitter site because it appeared from all the facts at that time to clearly be within the permissible area for location of a transmitter site for the proposed Miramar Beach station. Mr. Suffa wanted the coordinates of the proposed site to be accurate, and for this reason, he asked me to have the land surveyor (Mr. Russell D. Aldrich) confirm the precise geographic coordinates. I thereupon followed up with Mr. Aldrich who provided the geographic coordinates of Mr. J. R. King's property to me in a note dated April 11, 1992 and sent to me by Mr. Aldrich via facsimile. A copy of that note is annexed hereto as Attachment 1.

7. As will be noted from the April 11, 1992 note from Mr. Aldrich to me, two sets of coordinates were shown in the note; one set of coordinates was for Mr. John G. Martin's property ("Site No. 1"), and the other set of coordinates was for the property of Mr. J.R. King ("Site No. 2"). The note from Mr. Aldrich makes it clear that the J.R. King property corresponded to the coordinates 30° 23' 31" North Latitude, 86° 18' 25" West



Longitude and was located on the "West 1/2 of Lot 48, sec. 24 - 25, R. 21W [i.e., Section 24, Range 21 West]."

8. Upon receiving the April 11, 1992 note from Mr. Aldrich setting forth the coordinates for the proposed transmitter site on Mr. King's property, I called Mr. Suffa once again to confirm with him that the site in question was acceptable and was the site upon which I should proceed. Consequently, on April 13, 1992, I sent to Mr. King a letter in which I offered to secure an option to purchase from Mr. King up to two acres (Lot 48, Section 24, Township 2 South) which Mr. King owns and which are located off of Mack Bayou Road in Miramar Beach, Florida. A copy of my April 13, 1992 letter to Mr. King is annexed hereto as Attachment 2. On April 17, 1992, Mr. King sent me a letter confirming his willingness to sell to me two acres of his property on Lot 48, Section 24, Township 2 South, Range 21 West, on Mack Bayou Road for a price of \$40,000. I was given a right of first refusal on the property, as well. A copy of Mr. King's letter of April 17, 1992 is annexed hereto as Attachment 3. A confirming letter was sent to Mr. King on April 30, 1992 and a copy of that letter is annexed hereto as Attachment 4. I have periodically remained in touch with Mr. King since April 1992 to keep him apprised of progress on my application.

9. On July 26, 1993, Mark and Renee Carter (the "Carters") filed a Contingent Motion To Enlarge Issues in connection with my

Miramar Beach, Florida application, in which the Carters contended that the coordinates specified in my application for my proposed transmitter site were not located on land owned by Mr. J.R. King (i.e., Lot 48), Section 24, Township 2, South, Range 21 West, Santa Rosa Plantation Company Subdivision, Walton County, Florida. Although the information set forth above makes it clear that I have never had any basis to doubt the accuracy of the site information contained in my application, nonetheless, once the Carters raised the question as to site availability in their Contingent Motion To Enlarge Issues, I asked Mr. Russell Aldrich, the professional land surveyor whose services I had used, to reconfirm that the site coordinates set forth in my application were, indeed, located on Lot 48. In a letter dated August 9, 1993, Mr. Aldrich reconfirmed that my transmitter site coordinates do, indeed, lie on Lot 48, which is owned by Mr. J.R. King. Mr. Aldrich confirmed the foregoing facts by rescaling Lot 48 on a 1970 quadrangle map. A copy of Mr. Aldrich's letter of August 9, 1993 is annexed hereto as Attachment 5.

I hereby declare, certify and state, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

---

Howard B. Dolgoff

Executed on: \_\_\_\_\_

**DECLARATION**

I, Howard B. Dolgoff, do hereby declare, certify and state as follows:

1. I am an individual applicant (PCC File No. BPH-911223ME) for a construction permit for a new FM radio station on Channel 292A in Miramar Beach, Florida.

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on the map which had been supplied by my consulting engineer, Mr. Suffa.

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Longitude and was located on the "West 1/2 of Lot 48, sec. 24 - 25, R. 21W [i.e., Section 24, Range 21 West]."

8. Upon receiving the April 11, 1992 note from Mr. Alvin setting forth the coordinates for the proposed transmitter site on Mr. King's property, I called Mr. Suffa once again to confirm with him that the site in question was acceptable and was the site upon which I should proceed. Consequently, on April 11, 1992, I sent to Mr. King a letter in which I offered to secure an option to purchase from Mr. King up to two acres (Lot 48, Section 24, Township 2 South) which Mr. King owns and which are located off of Mack Bayou Road in Miramar Beach, Florida. A copy of my April 13, 1992 letter to Mr. King is annexed hereto as Attachment 2. On April 17, 1992, Mr. King sent me a letter confirming his willingness to sell to me two acres of his property on Lot 48, Section 24, Township 2 South, Range 21 West, on Mack Bayou Road for a price of \$40,000. I was given a right of first refusal on the property, as well. A copy of Mr. King's letter of April 17, 1992 is annexed hereto as Attachment 3. A confirming letter was sent to Mr. King on April 30, 1992 and a copy of that letter is annexed hereto as Attachment 4. I have periodically remained in touch with Mr. King since April 1992 to keep him apprised of progress on my application.

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Miramar Beach, Florida application, in which the Carters contended that the coordinates specified in my application for my proposed transmitter site were not located on land owned by Mr. J.R. King (i.e., Lot 48), Section 24, Township 2, South, Range 21 West, Santa Rosa Plantation Company Subdivision, Walton County, Florida. Although the information set forth above makes it clear that I have never had any basis to doubt the accuracy of the information contained in my application, nonetheless, once the Carters raised the question as to site availability in their Contingent Motion To Enlarge Issues, I asked Mr. Don Aldrich, the professional land surveyor whose services I had used, to reconfirm that the site coordinates set forth in my application were, indeed, located on Lot 48. In a letter dated August 9, 1993, Mr. Aldrich reconfirmed that my transmitter site coordinates do, indeed, lie on Lot 48, which is owned by Mr. J.R. King. Mr. Aldrich confirmed the foregoing facts by locating Lot 48 on a 1970 quadrangle map. A copy of Mr. Aldrich's letter of August 9, 1993 is annexed hereto as Attachment 5.

I hereby declare, certify and state, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

  
Howard B. DeLoof

Executed on: AUGUST 15, 1993





EMERALD COAST ASSOCIATES, INC.  
LAND SURVEYORS

Formerly  
Raymond Richardson & Associates, Inc.  
40558 EMERALD COAST PARKWAY  
DESTIN, FL 32541

FAX TRANSMISSION

DATE: 4-11-92

RECEIVER'S FAX NO: (904) 822-2897

TO: Howard

FROM: Russ

PAGES FOLLOW THIS COVER SHEET.

OUR FAX NO. IS (904) 654-2740

IF YOU DO NOT RECEIVE ALL THE MATERIAL BEING TRANSMITTED, PLEASE CALL EMERALD COAST ASSOCIATES, INC., AT (904) 837-8242.

COMMENTS: Howard: John asked for info on 2 sites and they are as follows:

Site No. 1, Lot 15 BLK "B" La Kuthwin Meadows S/O

Long - 86° 18' 17"

Lat - 30° 23' 37"

Site No. 2, West 1/2 of Lot 48, Sec. 24, T-2S, R-21W

Long - 86° 18' 25"

Lat - 30° 23' 31"

Call me if you have any Questions



**Attachment 2**

Howard B. Dolgoff  
3186 Ferns Glen Drive  
Tallahassee, FL 32308  
(904)893-0202

April 13, 1992

Mr. J.B. King  
336 Lewis Turner Blvd.  
Ft. Walton Beach, FL 32548

Re: Miramar Beach, Florida Property

Dear Mr. King:

Please consider this letter to be an offer on my part to secure from you an option to purchase from you up to two (2) acres (Lot 48, Section 24, Township 2 south, Range 2) which you own off of Mack Bayou Road in Miramar Beach, Florida. I am interested in securing an option to purchase the property for use as the location of a new tower and antenna/transmitter site for a new FM radio station in Miramar Beach, Florida, for which I have filed an application with the Federal Communication Commission in Washington, D.C. Since there is one competing applicant for the FM channel in question pending before the FCC, it is uncertain at this time when my application will be acted upon by the FCC.

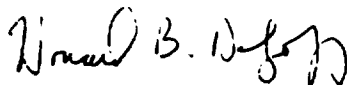
The initial term of the option will be five (5) years, and this initial term will automatically be extended for successive periods of two years each, unless I notify you in writing, at least 60 days prior to the expiration of the option term, of my intention not to have the term extended.

As consideration for the exclusive option, I hereby offer to pay to you the sum of \$500.00 for each year during which the option is in effect. The option may be exercised by me in writing, and upon exercise of the option, you and I will negotiate in good faith a definitive agreement concerning the sale of the parcel on which I hold the option. Such agreement will contain the usual and customary terms and conditions, including, without limitation, terms as to purchase price, grant of all necessary easements (including, without limitation, easement for access to the parcel in question), legal fees, survey fees, retention of mineral rights, and other matters. In this connection, it is understood and agreed that you will be granting to me all necessary easements to enable me to utilize the parcel of property that I will be purchasing in the manner intended and for the purpose intended, as described above.

The price at which I may exercise my option to purchase your property will be \$10,000.00 per acre. Any and all "easement fees" will not exceed \$100.00 per annum.

If the foregoing terms and conditions are acceptable to you, please so indicate by signing and dating the enclosed extra copy of this letter and by returning it to me as quickly as possible. At that time, I shall proceed to have a formal option agreement prepared, and, upon execution of that agreement, the option payment for the first five years of the option term will be delivered to you.

Very truly yours,

  
Howard B. Dolgoff

Enclosure  
(Extra copy of this letter.)

Accepted and agreed to on this \_\_\_\_\_ day of April 1992.

By: \_\_\_\_\_  
Mr. J.B. King  
Owner

**Attachment 3**



**MOBILE HOME MOVERS & SERVICE**



336 Lewis Street • Fort Walton Beach, Florida 32547 • (904) 862-5415

April 17, 1992

Howard B. Dolgoff  
3186 Ferns Glen Drive  
Tallahassee, FL 32308

RE: Lot 48 Section 24 Township 2 South, 21 West  
Mack Bayou Rd. (2 acres from the Northwest Corner)

In Compliance with your request dated 13 April, 1992, I hereby agree to sell you 2 acres of the above referenced property at a price of \$40,000.00.

This offer to sell includes my right to continue to place the property in the open Market for sale.

However, I do hereby give you the first right of refusal to any and all offers made for the purchase of the property in Lot 48, Section 24 Township 2 South, 21 West, Mack Bayou Rd., to which you will have 10 (ten) days to make a decision.

Upon FCC commitment to you- you hereby agree to contract and close on the above referenced property within 90 (Ninety) days of that written commitment.

Sincerely,

J.R.King

Attachment 4

**MIX 103.1 fm**  
Howard B. Dolgoff  
3198 Ferns Glen Drive  
Tallahassee, FL 32308  
(904)893-0202

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April 30, 1992

Mr. J.R. King  
336 Lewis Street  
Ft. Walton Beach, FL 32547

Dear Mr. King,

I greatly appreciate your willingness to sell me two (2) acres of your property in Miramar Beach, off Mack Bayou Road, for construction of a new FM broadcast tower.

Please keep me advised as to the availability of the property, and let me know as soon as possible if you receive an offer from a bonafide purchaser. You can contact me at my office at (904)386-5141, or at home, (904)893-0202. I will then act to expedite a final purchase from you.

Again, Mr. King, thank you for affording me this opportunity.

Best regards,

Howard B. Dolgoff

cc: Mr. John G. Martin  
Waterwood Properties, Inc.



**Attachment 5**